Providence Hospital and Mercy Hospital *and* Massachusetts Nurses Association. Cases 1–CA–32177 and 1–CA–32178

January 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On September 29, 1995, Administrative Law Judge David S. Davidson issued the attached decision. The Respondents filed exceptions, a supporting brief, and a reply brief to the General Counsel's answering brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Providence Hospital, Holyoke, Massachusetts, and Mercy Hospital, Springfield, Massachusetts, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) Furnish to the Association in a timely fashion the information requested by the Association in its requests of July 26 and August 5, 1994.''

2. Substitute the attached notices for those of the administrative law judge.

[1] We shall modify the judge's recommended Order and notice to require the Respondent to furnish to the Union the information requested in the Union's requests of July 26 and August 5, 1994, to more closely reflect the violations found.

Member Cohen agrees that the requested information relating to the proposed affiliation/consolidation with Holyoke-Chicopee Area Health Resource, Inc. was relevant. However, he relies solely on the Respondent's July 29, 1994 letter and the attached publication sent to employees indicating that, as a result of the merger, changes were underway, including the potential reallocation or elimination of jobs.

The Respondents have requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with the Massachusetts Nursing Association by failing and refusing in a timely fashion to furnish it with information which is relevant and reasonably necessary to the performance of the Association's duty as the collective-bargaining representative for our registered nurses in the following unit which is appropriate for purposes of collective bargaining:

> All registered nurses, excluding the vice president of nursing service, assistant director of nurses, members of religious orders, and all clinical and administrative directors, and nursing managers, whether or not full or part time, and further excluding all other employees of the hospital.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish to the Association in a timely fashion the information requested by the Association in its requests of July 26 and August 5, 1994.

PROVIDENCE HOSPITAL

APPENDIX B

NOTICE TO EMPLOYEES
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> All registered nurses, excluding the vice president of nursing, director of nursing service, associate director, assistant directors of nursing service, nurse managers, clinical nurse supervisors, nurs-

ing administrative supervisors, supervisors, members of religious orders, and all other employees of the hospital.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish to the Association in a timely fashion the information requested by the Association in its requests of July 26 and August 5, 1994.

MERCY HOSPITAL

Elizabeth A. Vorro, Esq., for the General Counsel.
Maurice M. Cahillane, Esq., of Springfield, Massachusetts, for the Respondents.

DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge. This case was tried in Springfield, Massachusetts, on May 17, 1995. The charges were filed on October 5, 1994, and initial complaints issued on January 9, 1995. The amended consolidated complaint issued on March 16, 1995.

After the close of the hearing the parties filed a joint motion to reopen the record and a joint stipulation to reopen the record to receive in evidence exhibits concerning termination of consolidation negotiations between Respondents and Holyoke Hospital. Thereafter, counsel for the General Counsel filed a further motion to reopen the record for receipt of exhibits, to which there is no objection. Both motions are granted.[1]

The issues are whether Respondents unlawfully refused to furnish information to the Charging Party (MNA) concerning a proposed consolidation of the operations of the two hospitals and concerning a further proposed consolidation between them and Holyoke Hospital. Respondents contend that they provided the requested information concerning the consolidation of their operations, that the requests for information concerning their proposed consolidation with Holyoke Hospital were premature, that the information sought was not relevant to any issue appropriate for collective bargaining, that the information sought was confidential, and that the requests are now moot.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel and Respondents, I make the following

[1] Accordingly, the following exhibits have been received in evidence: R. Exh. 2, letter dated June 15, 1995, from Donald Milan to Sr. Kathleen Popko; R. Exh. 3, press release issued by Sisters of Providence Health System (SPHS) dated June 13, 1995; R. Exh. 4, letter to Providence and Mercy employees dated June 13, 1995; G.C. Exh. 38, ''Open Letter to the Community''; G.C. Exh. 39, copy of the complaint and jury demand in civil action no. 95 1051. Also received is the parties' stipulation that Sr. Kathleen Popko, the President and CEO of SPHS, is an agent of SPHS within the meaning of Sec. 2(13) of the Act.

FINDINGS OF FACT

I. JURISDICTION

Respondents operate hospitals providing inpatient and outpatient care at facilities in Holyoke and Springfield, Massachusetts, where each annually derives gross revenues in excess of $250,000 and purchases and receives goods and materials valued in excess of $5000 directly from points outside the Commonwealth of Massachusetts. Respondents admit, and I find, that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that MNA is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Consolidation of Providence and Mercy Hospitals*

Providence and Mercy Hospitals are members of the Sisters of Providence Health System (SPHS). Each hospital has a separate board of trustees and a separate corporate identity. MNA represents separate bargaining units of registered nurses employed at each of the hospitals. The current collective-bargaining agreement at Providence runs from January 1, 1993, to December 31, 1995. The current agreement at Mercy runs from January 1, 1994, to December 31, 1995.

In June 1993, Respondents' boards of trustees held the first of what were announced to be monthly joint meetings to further cooperative efforts between the two hospitals. By the fall of 1993, the boards had voted to operate the two hospitals with one chief executive officer, Vincent McCorkle, and to consolidate a number of high level management positions.

On February 24, 1994, employees learned from the press and a letter from McCorkle that Respondents planned to lay off 200 or more employees at both hospitals as part of the ongoing reorganization. On the same day, the board of trustees for SPHS signed a memorandum of intent to affiliate with Holyoke-Chicopee Area Health Resources, Inc. (HCAHR), the parent corporation of Holyoke Hospital.

On the next day, McCorkle announced to employees that a significant announcement was about to be made, and the three hospitals issued a media advisory announcing the signing of the memorandum of intent.

Thereafter, the hospitals filed the memorandum of intent to affiliate with the Massachusetts Attorney General's Office for compulsory review by its Antitrust Division and with the U.S. Department of Justice for a similar review. Also included in the regulatory filings were a Memorandum of Understanding which would govern the transaction of it were approved by the state and Federal agencies and a confidentiality agreement executed between the two organizations. Respondents also submitted to the Attorney General a study of SPHS and HCAHR conducted by the accounting firm Ernst and Young in preparation for the merger. A summary of that study was released to Respondents' administrators in early April 1995. Before then, it was off limits to Respondents' management because of antitrust considerations. According to McCorkle, because SPHS and HCAHR were required to act as competitors pending approval or the proposed affiliation, no agreements had been reached as to the

ultimate consequence of their affiliation on employees, staffing, and services to be provided at each location.

By May 17, 1995, the date of the hearing in this case, the Massachusetts Department of Health had issued a determination of need and the Department of Justice had implicitly approved the plan by failing to act within a prescribed time period. The Massachusetts Attorney General had not approved the plan but had permitted SPHS and HCAHR to engage in preliminary discussions.

After the hearing closed, the Attorney General apparently took action on the review of the proposed affiliation. On June 15, HCAHR's chairman wrote Sister Kathleen Popko, chairman of SPHS, that its board of directors had voted to exercise its right under the Memorandum of Understanding between SPHS and HCAHR to terminate the memorandum ''based on the failure of the condition set forth in paragraph 21(b) of the Memorandum, because the implementation of the relationship between the parties was challenged by the Antitrust Division of the Massachusetts Attorney General's Office and the matter was not resolved to the satisfaction of Holyoke-Chicopee Area Health Resources, Inc.''

On learning of the decision of HCAHR, Sr. Popko, issued a press release announcing the termination of the Memorandum of Understanding and expressing disappointment at HCAHR's action. In it she was quoted as stating, ''In our view the Memorandum of Understanding was a binding commitment to affiliate, subject to certain conditions, all of which have been met to our satisfaction. We consider the Holyoke Board's purported termination of the Memorandum of Understanding to be unwarranted and feel it has reneged on its commitment to the Sisters of Providence Health System and to the Greater Holyoke and Springfield communities.'' It quoted her further, ''The Sisters of Providence Health System believes that Holyoke has used the Attorney General's agreement as a screen to hide the real fact that it has changed its mind about the desirability of the affiliation. Holyoke seems to be trying to squeeze its stated reasons for terminating the Memorandum of Understanding into a very narrowly worded condition that it claims was not met because the Attorney General's agreement was not satisfactory, without sharing the real reasons for its actions because they would not legally support termination.''

In a letter to Mercy and Providence Hospital employees, signed by Sr. Popko and Vincent McCorkle, they announced that they were disappointed to inform employees of the decision of HCAHR, but enthusiastic about their decision to implement an alternate plan for major investment in ''bold initiatives'' to provide greater benefits to the people served by Respondents. The letter also stated, ''We do not believe that the Holyoke organization had an appropriate basis to terminate the proposed relationship with the SPHS.''

Thereafter, in an undated open letter to the community entitled ''What Went Wrong,'' Sr. Popko set forth a narrative of what had happened, again questioned the truth of the reasons advanced by HCAHR for terminating the agreement, and stated, ''[W]e plan to enforce the agreement with Holyoke Hospital. They gave their word to us and to the Attorney General and they should abide by their word in the best interest of the community. No one should be able to break a contract and just walk away.'' As announced in the open letter, on July 12, 1995, SPHS filed a complaint in Superior Court in which it alleged, among other things, that SPHS and HCAHR had entered into ''a binding Memorandum of Understanding'' on February 1994 and that HCAHR's reason advanced for terminating the agreement was ''false and pretextual.'' As a remedy, the complaint seeks specific performance of the contract and damages.

B. *The Requests for Information*

On August 11, 1993, after reading in the press of the consolidation of operations of Providence and Mercy Hospitals, Shirley Astle of MNA wrote Mercy Hospital asking for confirmation in writing of the plans for the merger or consolidation and an outline of the changes it would bring for the registered nurses represented by MNA at both hospitals. The hospital replied that there were no plans for a merger and that if there were such discussions or plans in the future, MNA would be notified well in advance of any action. With respect to consolidation the letter continued, ''We have indeed been discussing at the vice presidential and at the department head level opportunities for consolidating management. It would seem to me that there should be no changes for the R.N.'s as the M.N.A. does not represent anyone in management.'' On September 28, 1993, also in apparent response to a request for information, Alexander Stetynski Jr. wrote for Providence Hospital summarizing what had appeared in local newspaper articles and advising ''that the 'sister' medical facilities will be continuing to look at ways to integrate how they provide care, but it is much too early to determine the nature and extent of any potential impact on employee working conditions.''

On May, 5, 1994, Astle wrote McCorkle as president of Mercy Hospital as follows:

> In order to begin our assessment of the merger's impact on the conditions of work for the RN's MNA represents at *Providence* and *Mercy* Hospitals, I need a copy of the *Providence Health System's* business plan.

McCorkle replied on May 16 that he had forwarded the request to the hospital's labor counsel. On May 24 Astle wrote McCorkle that she had not yet received a response to her request. On June 2 John Egan replied on behalf of the hospital that neither Mercy nor Providence Hospital had a copy of Providence Health System's business plan if indeed one existed, pointing out that Providence Health System was a ''totally separate corporation'' and that he had no knowledge whether it had any type of business plan.

On July 26 and August 5, 1994, MNA addressed virtually identical written requests to Mercy and Providence Hospitals for information or documents concerning the ''possible or completed consolidation, merger, and/or affiliation with other hospitals in the region.'' With respect to the consolidation of Mercy and Providence, MNA asked for documents or detailed explanations in lieu of documents which do not exist concerning (a) ''any corporate merger, consolidation, and/or affiliation of any kind between Mercy and Providence''; (b) ''plans for altering the operation of Mercy [and Providence] arising from'' such merger, consolidation, or affiliation ''including but not limited to plans, if any, to eliminate any nursing units, layoff members of the bargaining unit, interchange personnel with Providence, change the budgeting and funding sources of Mercy, integrate operationally the two hospitals, and integrate the management of the two hos-

pitals''; and (c) ''the status of Mercy and Providence as subcorporations in the corporate structure of SPHS.''[2]

With respect to the proposed consolidation of Mercy, Providence, and Holyoke, the letters requested documents or detailed explanations in lieu of documents which do not exist concerning (a) ''corporate merger, consolidation, and/or affiliation between Mercy, Providence, and Holyoke, including but not limited to a copy of the 'memorandum of intent' referenced in the February 25, 1994 announcement by officials of SPHS and HCAHR''; (b) ''corporate merger, consolidation and/or affiliation of SPHS and HCAHR and/or Holyoke''; and (c) ''plans for altering the operation of Mercy [and Providence] arising from any possible changes in status'' due to the proposed consolidation, ''including but not limited to plans, if any, to eliminate any nursing units, layoff members of the bargaining unit, interchange personnel with the other hospitals, change the budgeting and funding sources for Mercy [and Providence], operationally integrate the hospitals, integrate the management of the hospitals.''

On July 29, between the dates of the two MNA information requests, McCorkle addressed a letter to the employees of Mercy and Providence Hospitals. The letter began:

> In an ongoing effort to keep you updated on the proposed consolidation between Sisters of Providence Health System, Inc., and Holyoke-Chicopee Area Health Resources, Inc., we are pleased to announce that the process is moving forward. The boards of both organizations have given final approval to the proposed consolidation, subject to federal and state regulatory approval.
>
> We would like to take this opportunity to provide you with some specifics about the proposed system. A new hospital parent company will be formed to maximize use of Holyoke, Mercy, and Providence Hospitals through more efficient delivery of services. It is important to the future survival of these hospitals that we take this significant step to reduce costs and thereby remain competitive. as we look at better ways to serve the Pioneer Valley, we will be combining some acute care, non-acute care, and administrative services among our facilities. This will give each hospital the critical mass it needs to thrive and provide higher quality, less expensive health care that will be an asset for the community.

The letter continues, raising the question of the impact of the consolidation on individual jobs, seeking to assure employees that ''most jobs will be saved and moved,'' and referring to ''[a] just-completed study [which] concludes that the consolidated system would save more than $12 million dollars a year in operating costs alone.'' An attached publication, *Issues and Answers*, states that at some time in the future there will be a significant reallocation of jobs within the new system and that there may be some job eliminations at all three hospitals but that ''right now, we have no game plan for layoffs.'' It states that it is almost impossible to say when consolidation is likely to take place but sets forth as the most likely timeframe, 3 to 6 months. In two places it indicates that work on changes will start when regulatory approval is received.

On August 9, 1994, Respondents' counsel replied to MNA's information requests, asking for additional time to respond to the requests and stating that he hoped to be able to respond ''sometime next week.'' Having received no further response by September 12, MNA renewed its request. On October 5, still having received no response, MNA filed the charges which led to the complaints in this case.

On December 29, 1994, about 10 days before issuance of the original complaints in this case, Respondents' counsel provided a partial response to ''the first area of inquiry'' in MNA's request. His letter began, ''I am writing to you in response to the NLRB information charge to provide you with the information requested.'' On January 13, 1995, counsel for MNA wrote Respondent's counsel thanking him for the information but pointing out that the information as to transactions between Mercy and Providence was inadequate in two respects. Insofar as appears, Respondents made no further reply until May 16, 1995, the eve of the hearing in this case, when Respondents provided additional information relating to the relationship between Holyoke and Providence. At that point Respondents satisfied MNA's information request with respect to the consolidation of Mercy and Providence. Respondents furnished no information in response to the requests relating to the proposed consolidation of Mercy, Providence, and Holyoke.

C. *Concluding Findings*

1. The information requests relating to the consolidation of Mercy and Providence

The General Counsel contends that the information requested by MNA relating to the consolidation of Mercy and Providence was relevant to the performance of MNA's duty as bargaining representative; that it was necessary for MNA to carry out its duty to determine what effect the consolidation would have on the bargaining units; and that it was not required simply to take Respondents' word that there would be no effect on the units. The General Counsel also contends that untimely submission of the requested information does not cure unlawful delay or render the issue moot. Respondents contend that there was no information that was relevant to the bargaining unit and that Respondents have twice furnished the requested information. Respondents contend further that all the events were public knowledge and known to the Union as they occurred.

MNA Counsel Canzoneri testified that MNA needed to know the type of transaction that the Respondents were contemplating so that it could determine what legal effect if any it would have on its collective-bargaining agreements with the hospitals, when it should demand bargaining over the effects of the transaction, the identity of the parties which remain after the transaction with whom MNA would be dealing, how operational changes that would impact the unit employees so that it could request bargaining over their effects, and what economic proposals to make in bargaining.

As stated in *August A. Busch & Co.*, 309 NLRB 714, 720 (1992):

> Over the years, standards have been developed in this area. Where the information sought relates to

[2] The quoted language comes from the letter to Mercy.

> ''core'' terms and conditions of employment within the bargaining unit, no specific showing of relevance is required. *Atlas Meal Parts Co. v. NLRB*, 660 F.2d 304, 309–310 (7th Cir. 1981). When the requested information extends to matters outside the realm of the unit, ''relevance is required to be somewhat more precise.'' *Ohio Power Co.*, 216 NLRB 987, 991 (1975). ''[A] reasonable belief'' as to the usefulness of the information sought has been held to be sufficient. *Walter M. Yoder & Sons v. NLRB*, 754 F.2d 531, 535 (4th Cir. 1985). The ''relevance'' of the request is governed by ''a liberal discovery-type standard,'' *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967), i.e., ''the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities'' Ibid.

Assuming that the General Counsel had the burden of showing relevance of the requested information, I find that under the liberal discovery standard the burden has been met for the reasons stated by Canzoneri. Even assuming that there was nothing more to be known than had already become public knowledge through news releases and internal hospital communications, the Union was entitled to hear that directly from the Respondents and was not required to assume that there was nothing more to be known than it had learned from the public domain. *August A. Busch & Co.*, supra; *Mary Thompson Hospital v. NLRB*, 953 F.2d 741 (7th Cir. 1991).

The fact that Respondents ultimately responded to MNA's information requests did not satisfy their obligation to furnish the information or make a remedy unnecessary. ''[T]he duty to supply information includes the duty to do so in a timely fashion.'' *Mary Thompson Hospital*, 296 NLRB 1245, 1250 (1989), enfd. 943 F.2d 741 (7th Cir. 1991). MNA's requests for information were sent on July 26 and August 5, 1994. Initially, Respondents asked for more time to reply on August 9, ''due to vacations and scheduling conflicts,'' adding, ''I hope to be able to respond to you sometime next week.'' However, even after the requests were renewed on September 12, Respondents did not reply until another 3-1/2 months had passed and complaints against Respondents were about to issue. Then the letter sent to MNA began, ''I am writing to you in response to the NLRB information charge to provide you with the information requested.'' Although the Union wrote on January 13, 1995, pointing out that the response was inadequate in two respects, Respondents again did not respond until the eve of the trial 4 months later. It is clear that but for the pendency of this case, the responses, if any, would have been even later. As the content of the responses indicates, the delay can not be attributed to the time needed to assemble the information furnished. I find that these belated responses did not satisfy Respondents' obligation to furnish the information to the Union and that by delaying its responses, Respondents violated Section 8(a)(5) and (1) of the Act.[3]

[3] In her brief, counsel for the General Counsel moves to amend the complaint to allege specifically that Respondents failed to timely provide the information relating to the consolidation of Mercy and Providence. Counsel for the General Counsel also contends that the allegation in the complaint is sufficient to embrace finding a violation based on delay. Because I agree with the latter contention, I find it unnecessary to grant the motion to amend the complaint. *Finn Industries*, 314 NLRB 556, 558 fn. 12 (1994).

2. The information requests relating to the consolidation with Holyoke

The contentions of the parties with respect to these requests for information raise four issues: Whether the information sought was relevant; whether the information sought was confidential; whether the requests were premature; and whether the issues are now moot.

In *Mary Thompson Hospital*, 296 NLRB 1245 (1989), enfd. 943 F.2d 741 (7th Cir. 1991), the Board adopted the decision of the administrative law judge in which he held, with respect to a request for similar information:

> [T]he possibility that the agreement, or other understandings between [the affiliating hospitals] relate to job opportunities, the location of assets out of which employee claims for pensions and other moneys due might be satisfied, and the underlying question of whether the Respondent is really out of business or has merged its operations with [another hospital] in a manner which would suggest possible ongoing obligations to the Union in this case are all reasons why the terms and conditions of [agreements between the hospitals] would be relevant to collective bargaining.

In *Children's Hospital of San Francisco*, 312 NLRB 920 (1993), the Board held that similar information was relevant to bargaining over the effects of a proposed merger and over the terms of a new collective-bargaining agreement.[4]

The reasons advanced by Canzoneri for needing the information in this case are similar to those in the two cited cases. MNA needed to know the impact of the proposed consolidation on its contracts with Respondents, its effect upon the continuing viability of its bargaining units and representative status, and operational changes which might affect employment and working conditions of unit employees. Respondents argue that the information contained in the documents that it sought did not include agreements as to actual operational changes, changes relevant to bargaining unit working conditions, or interchange of employees, and that ''the bare fact of affiliation in and of itself, would not be relevant to any legitimate union inquiry.'' However, the nature of the affiliation, presumably set forth in the agreement, would bear on the impact of the consolidation on contract rights, and with the date approaching for determining whether to reopen the Providence collective-bargaining agreement, would be relevant to deciding whether to reopen the agree-

[4] Respondents' contention in its brief that the judge in *Children's Hospital* ''held that the types of information requested must 'involve employees' terms and conditions of employment' and that the Union was required to make a showing of their relevance,'' misreads the decision in that case. The judge wrote, ''The types of information, at issue herein, *did not* involve employees' terms and conditions of employment, therefore there is no presumption of relevancy, and CNA was required to demonstrate such.'' [Emphasis added.] In addition, Respondents argue that the fact that the administrative law judge found the violation in that case based on a February 1991 request rather than based on a request made the previous September warrants the inference that events occurring between those dates were critical to the finding of relevance. As the September request was outside the Sec. 10(b) period in that case, I would infer only that the earlier request was not alleged as a basis for the violation.

ment. Moreover, while Respondents assert that there was nothing in the documents sought that pertained to the concerns of MNA, the standard for determining relevance is broad, the documents were arguably relevant, Respondents' July 29 letter to employees suggested that some decisions might have been made which would affect bargaining unit employees, and MNA was entitled to see for itself whether the agreements with HCAHR required action on its part on behalf of the nurses it represented.

Respondent is correct that an employer need not provide information if it has a ''legitimate and substantial'' interest in maintaining the confidentiality of the information which outweighs the union's needs. *The Good Life Beverage Co*., 313 NLRB 1060, 1061 (1993). However, to maintain a confidentiality defense, an employer must explain why the information must be kept confidential and discuss its concerns with the Union and possible methods of alleviating them. *Taylor Hospital*, 317 NLRB 991 (1995). Here Respondents did neither. After the initial request for additional time to respond to MNA's requests, Respondents made no further response, did not raise the confidentiality contention until this proceeding began, and never discussed the issue with MNA in an effort to find a way to accommodate their respective concerns. Accordingly, I reject Respondents' confidentiality defense.

Respondents contend that the requests were premature because the consolidation had not been approved by the regulatory agencies. In *Children's Hospital* a similar argument was advanced and rejected. The administrative law judge, whose decision was adopted by the Board, rejected the contention because bargaining was scheduled to commence ''with or without merger approval,'' and the merger undoubtedly would have been an issue. Here MNA was faced with deciding whether bargaining should begin and whether the merger and its impact on the collective-bargaining agreement and should be an issue. A similar result is warranted.

In addition, any finding that a request for information is premature implies that the information sought is relevant, for unless information is relevant, a request for it would never be timely and could not be premature. Because it implies relevance, the defense that a request is premature, like the defense that information is confidential, is an affirmative defense, and it is not sufficient to wait until a charge is filed and a complaint issues to raise the contention. Here, after indicating that a response would be forthcoming, Respondents made no response. For this additional reason, I reject Respondents' contention that the requests were premature.

Finally, Respondents contend that the information is no longer relevant and that its refusal to furnish the information is moot because HCAHR has terminated the agreement to affiliate with SPHS. However, from the information received posthearing, it appears that SPHS not only maintains that the agreement to affiliate between it and HCAHR is binding but SPHS is actively seeking to enforce the agreement. The circumstances which gave rise to MNA's requests have not gone away with no likelihood of recurrence. Moreover, even assuming that the consolidation with HCAHR is a dead issue, the issue has not become moot. *Mary Thompson Hospital*, supra, 296 NLRB at 1250.

CONCLUSION OF LAW

By failing and refusing in a timely fashion to furnish information requested by MNA with respect to the affiliation of Providence and Mercy Hospitals and by failing and refusing in any fashion to furnish information with respect to the affiliation of SPHS and HCAHR pursuant to MNA's requests Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondents, Providence Hospital, Holyoke, Massachusetts, and Mercy Hospital, Springfield, Massachusetts, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Massachusetts Nursing Association by failing or refusing in timely fashion to furnish it with information which is relevant and reasonably necessary to the performance of the Association's statutory duty as the collective-bargaining representative for Respondents' registered nurses in the following units which are appropriate for purposes of collective bargaining:

> All registered nurses employed by Providence Hospital, excluding the vice president of nursing service, assistant director of nurses, members of religious orders, and all clinical and administrative directors, and nursing managers, whether or not full or part time, and further excluding all other employees of the hospital.
>
> All registered nurses employed by Mercy Hospital, excluding the vice president of nursing, director of nursing service, associate director, assistant directors of nursing service, nurse managers, clinical nurse supervisors, nursing administrative supervisors, supervisors, members of religious orders, and all other employees of the hospital.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Association in a timely fashion, on request, information concerning any proposed affiliation or consolidation of Mercy Hospital and Providence Hospitals with one another and concerning proposed mergers, consoli-

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

dations, or affiliations of Providence and Mercy Hospitals with other health care providers.

(b) Post at its their Holyoke and Springfield, Massachusetts facilities copies of the attached notices marked ''Appendix A'' and ''Appendix B.''[6] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''